

1 Anthony D. Johnston (SBN 244282)
2 Attorney at Law
3 Johnston & Johnston Law Corp.
4 1600 G Street, Suite 102
5 Modesto, California 95354
6 Telephone: (209) 579-1150
7 Facsimile: (209) 579-9420

8
9 Attorney for Chapter 7 Trustee,
10 Michael D. McGranahan
11

12
13 UNITED STATES BANKRUPTCY COURT
14 EASTERN DISTRICT OF CALIFORNIA
15

16 In re

Case No. 12-92576

17 Michael Alan Kellogg and Laura
18 Jean Kellogg; AKA Mike Kellogg;
19 DBA Kellogg Environmental Inc.
20 DBA Environmental Systems;
21 FDBA Ron's Water Truck, Inc.,

Chapter 7 Case

D.C. No. ADJ-2

22 Debtors.

Hearing

Date: May 2, 2013

Time: 10:30 a.m.

Place: 1200 I Street, Suite 4
Modesto, California

23
24 MOTION FOR AUTHORITY TO SELL SHARES OF STOCK OF
25 KELLOGG ENVIRONMENTAL, INC., A DELAWARE CORPORATION
26

27 Michael D. McGranahan, (the "Trustee"), in his capacity as Chapter 7 Trustee for
28 the bankruptcy estate of Michael Alan Kellogg and Laura Jean Kellogg, brings this motion
to sell all outstanding shares of stock of Kellogg Environmental Inc., a Delaware
corporation (the "Shares"), which were owned by Michael Kellogg and Jean Kellogg (the
"Debtors") as of the petition date, which Shares are property of the bankruptcy estate.

Motion for Authority to Sell Shares of
Stock of Kellogg Environmental, Inc.,
a Delaware Corporation

1 This motion is brought pursuant to 11 United States Code § 363 (b)(1) and Federal Rule
2 of Bankruptcy Procedure 6004 (a), and pursuant to the notice requirements of Local Rule
3 9014-1(f)(2). In support of this motion, the Trustee respectfully represents:

4 1. On September 28, 2012, the Debtors filed a voluntary petition in this Court under
5 Chapter 7 of Title 11, United States Code. The Trustee was appointed interim trustee in
6 this case on September 28, 2012 and thereafter became permanent trustee, a position he
7 continues to hold.

8 2. This motion seeks authority to sell property of the estate out of the ordinary
9 course of business pursuant to 11 U.S.C. § 363 (b)(1).

10 3. The Debtors owned the Shares as of the petition date of September 28, 2012,
11 2012. The Shares represent 100% of the issued and outstanding common shares of
12 stock of Kellogg Environmental, Inc., a Delaware corporation (the "Corporation"). The
13 Corporation's common stock is the only class of stock of the Corporation.

14 4. Filed as EXHIBIT "A" in support of this motion is the balance sheet for the
15 Corporation, as of September 28, 2012 (the "Balance Sheet"). The Balance Sheet was
16 prepared by the Debtors, with the assistance of Jeffrey Bowman, the certified public
17 accountant for the Corporation. The Corporation shows bank deposits of \$11,500.93,
18 accounts receivable of \$11,917.21, and fixed assets of furniture and equipment with a
19 book value of \$30,900.00, for *total assets of \$54,318.14*.

20 5. The Balance Sheet shows the following liabilities: accounts payable of
21 \$3,842.94, credit card of \$10,791.25, sales tax payable of \$238.36, loan payable to BK
22 Trust of \$20,000.00, loan payable to shareholder of \$8,800.00, and note payable to Ron's
23 Water Truck, Inc., of \$30,900.00, for *total liabilities of \$74,572.55*. Accordingly, the *net*
24 *shareholders' equity was negative \$20,254.41*.

25 6. The Trustee has disregarded the \$8,800.00 loan to shareholder for valuation
26 purposes because the Debtors own 100% of the Shares.

27 7. The Debtors own a 22% interest in Ron's Water Truck, Inc. Filed as EXHIBIT

1 "B" in support of this motion is the balance sheet for Ron's Water Truck, Inc., as of
2 December 31, 2012. Said balance sheet was prepared by the Debtors, with the
3 assistance of Jeffrey Bowman, the certified public accountant for Ron's Water Truck, Inc.
4 Ron's Water Truck, Inc., is clearly insolvent. The book value of its assets is \$46,919.57,
5 with total liabilities of \$210,971.32. Accordingly, the *net shareholders' equity was negative*
6 *\$164,051.75*. The Trustee has disregarded the debt of \$30,900.00 owed to Ron's Water
7 Truck, Inc., in valuing the subject Shares.

8 8. Again, based on the Balance Sheet, the book value of the Shares (shareholders'
9 equity) is negative \$20,254.41. If the loan to shareholder of \$8,800.00 is disregarded, and
10 the loan to Ron's Water Truck, Inc., is disregarded, the book value of the Shares is
11 \$19,445.59. (The purchase price for the Shares, as set forth below, is \$45,350.00, which
12 is \$25,904.41 greater than the book value of the Shares.)

13 9. Rather than claiming an exemption in the Shares, (i) the Debtors claimed an
14 exemption in the accounts receivables of the Corporation pursuant to California Code of
15 Civil Procedure Section 703.140(b)(5) in the amount of \$11,917.21; (ii) the Debtors
16 claimed an exemption in the equipment and supplies of the Corporation pursuant to
17 California Code of Civil Procedure Section 703.140(b)(6) in the amount of \$2,200.00; and,
18 finally, (iii) the Debtors claimed an exemption in the equipment and supplies of the
19 Corporation pursuant to California Code of Civil Procedure Section 703.140(b)(5) in the
20 amount of \$11,232.79. The total claimed exemptions relative to assets of the Corporation
21 are \$25,350.00, which shall be referred to collectively as the "Exemption." The Debtors
22 could have claimed an exemption in the Shares pursuant to California Code of Civil
23 Procedure Section 703.140(b)(5).

24 10. The Trustee has entered into the Stock Purchase and Sell Agreement with the
25 Debtors whereby the Debtors have agreed to purchase the Shares for \$45,350.00 (the
26 "Purchase Price"). A copy of the Stock Purchase and Sell Agreement is filed as EXHIBIT
27 "C" in support of this motion. The Purchase Price will be paid as follows:

28 Motion for Authority to Sell Shares of
Stock of Kellogg Environmental, Inc.,
a Delaware Corporation

1 a. The Trustee will credit the Debtors in the amount of \$25,350.00, which is
2 equal to the claimed exemption; and

3 b. The Debtors have deposited \$20,000.00 with the Trustee, which will be
4 applied to pay the remaining balance of the Purchase Price upon the closing
5 of the sale and purchase of the Shares.

6 (The net cash purchase price, after application of the credit for the Exemption, is
7 \$20,000.00 (Purchase Price of \$45,350.00 - Exemption amount of \$25,350.00 =
8 \$20,000).)

9 11. If a higher bidder is successful at the hearing on this motion, the successful
10 bidder will be responsible for preparing any purchase agreement, on the terms set forth in
11 Paragraph 14, below.

12 12. Authority for this motion to sell assets is found in 11 U.S.C. § 363(b)(1): "The
13 trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary
14 course of business, property of the estate . . . " Selling shares of stock of this bankruptcy
15 estate is not a transaction in the ordinary course of business.

16 13. Notice of the proposed sale of the Property shall be made pursuant to Federal
17 Rule of Bankruptcy Procedure 6004(a). Notice is not required under subsection 7A of the
18 Clayton Act; thus, the notice of provisions of 11 U.S.C. § 363(b)(2) do not apply. Notice of
19 the proposed sale of the Property shall also be made pursuant to Local Rule 9014-1(f)(2).

20 14. If any prospective bidder wishes to make a higher offer in the form of a bid for
21 the Shares, the Trustee respectfully requests the following requirements: At least seven
22 days prior to the hearing date on this motion, a prospective bidder must (1) contact the
23 Trustee; (2) provide the Trustee a cashier's check, drawn on a California bank, in an
24 amount equal to or greater than \$20,000.00 (the Debtors' deposit equals \$20,000.00); and
25 (3) sign a contract which is identical to the Stock Purchase and Sell Agreement between
26 the Trustee and the Debtors, except for the purchase price, which will be determined
27 through bidding at the hearing on this motion, and except the bidder will not receive a
28

1 credit on the Purchase Price for the Exemption. The Trustee recommends a minimum
2 opening bid of \$46,350.00, with minimum incremental bids of \$200.00. The Debtors and
3 any bidders must be present at the hearing on this motion. Pursuant to Section 1.5 of the
4 Stock Purchase and Sell Agreement, if the Debtors are out bid and a third party purchases
5 the Shares, then the Trustee shall pay the Debtors from the sale proceeds the amount of
6 \$25,350.00, which is equal to the Exemption.

7 15. The Trustee's certified public accountant, Maria Stokman, has estimated that
8 the capital gain tax due on the sale of the Shares will be approximately \$4,000.00 for
9 federal and California combined.

10 16. The Trustee respectfully requests the court to waive the 14 day stay provision
11 of Federal Rule of Bankruptcy Procedure 6004(h) so as to allow the sale of the Shares
12 immediately upon entry of an order.

13 WHEREFORE, Michael D. McGranahan, acting in his capacity as trustee,
14 respectfully prays for an order of this Court:

15 1. Authorizing the sale of the Shares for the sum of \$45,350.00 on the terms
16 outlined in the Stock Purchase and Sell Agreement filed herewith as EXHIBIT "C"
17 (including but not limited to approval of the Trustee's application of a credit in the amount
18 of \$25,350.00 toward the Purchase Price for the Exemption, for a net cash purchase price
19 of \$20,000.00), assuming there is no better offer presented at the hearing on this motion;
20 or

21 2. Authorizing the sale of the Shares to any party which presents a better offer at
22 the hearing on this motion, in accordance with the terms of Paragraph 14 of this motion;

23 3. Authorizing, if the Debtors are out bid and a third party purchases the Shares,
24 the return to the Debtors of any and all deposits;

25 4. Authorizing the Trustee to execute all documents which are necessary or
26 convenient to complete the transaction; and

27 5. Waiving the 14 day stay provision of Federal Rule of Bankruptcy Procedure

1 6004(h) so as to allow the sale of the Shares immediately upon entry of an order.

2 Dated: April 11, 2013

3 Respectfully submitted,

4 /s/ Anthony D. Johnston

5 Anthony D. Johnston
6 Attorney for Trustee,
7 Michael D. McGranahan